

# LAEO FOIA

Lawrence Anthony Earth Organization, U.S. Chapter

- DIRECTIVE? 4. All national level HQ directives either hard copy or by email sent to or received by ARRT co-chairs from EPA, Coast Guard and/or NOAA on the subject of chemical dispersant policy for Alaska

3 EMAILS ATTACHED

ARE THEY "DIRECTIVES" PER  
LANGUAGE ABOVE?

Q # 4 (3)

- ANY DATE
- "NAT'L LEVEL, HQ DIRECTIVE"

January 31, 2013

Notes from Interagency Arctic meeting held on January 18, 2013

**Attendees:**

NOAA: Dave Westerholm

USCG: John Caplis, Mary Landry

EPA: Mathy Stanislaus, Dennis McClerran, Dana Tulis, Dana Stalcup, Roberta Runge, Craig Matthiessen, Greg Wilson, Vanessa Principe

DOI: invited but did not attend

**Main Items Discussed:**

1. Alaska Unified Plan and Dispersant Guidelines for dispersant usage
2. Ecological Risk Assessments (ERAs) for the Chukchi and Beaufort Seas
3. Commitment of resources from the USCG and DOI to help update the Subarea Contingency Plans

**Consensus and the Path Forward:**

**Support the development of Dispersant Guidelines in Annex F of the Alaska Unified Plan and use them as an expedited decision-making process for authorizing dispersant use.**

- Remove the term “pre-approval” and/or “pre-authorization” from the draft Dispersant Guidelines
- Ensure the guidelines are consistent with draft provisions of Subpart J proposed rule.
  - Consider parameters that are necessary to make an environmental tradeoff determination.
- Ensure the NRT Guidance on Environmental Monitoring for Atypical Dispersant Operations is included in the guidelines.
- Work towards pre-authorization of dispersant application off the coast of Alaska within a 2 year (2013-2014) timeline.
  - Ensure all parties understand what must be done to meet the regulatory requirements for pre-authorization.
  - Develop location specific matrices based on defensible scientific data, using existing ecosystem information (e.g., Biological Assessments, Environmental Impact Statements that include the Chukchi and the Beaufort Seas) to help identify which areas can be considered for dispersant application.

### **Support the completion of the Biological Assessment (BA) for Alaska Endangered Species.**

- An Ecological Risk Assessment (ERA) will not be conducted at this time based on resource limitations. An ERA would evaluate the possible consequences on the broader ecological community that oil drilling activities might have in the event of a spill and would have focused on the Chukchi and Beaufort Seas.
- The work on the Biological Assessment (BA), currently being conducted for the entire coast of Alaska, will continue. A BA is prepared under Section 7 of the Endangered Species Act to determine whether an activity is likely to adversely affect an endangered species or designated critical habitat.
- Timeline for completing the BA is contingent upon available resources, but projected for completion by the end of 2013.

### **Engage in and Commit Resources to Conduct Outreach to Stakeholders**

- Adding an expedited approval process for dispersant application into the Alaska Unified Plan will need to be socialized among stakeholders who are currently not in favor of chemical response methods to mitigate an oil spill in Alaska. An outreach plan will be jointly developed by the EPA, USCG, NOAA, and DOI which will identify gaps in resources to conduct the outreach effectively and long term budgetary needs.
  - Clear communication that dispersant use is not automatically the preferred response option in case of an oil discharge, but one of the tools (e.g. skimming, booming, in-situ burning) that could be considered along with its environmental tradeoffs, in order to minimize the overall damage to resources during an oil spill needs to be relayed to stakeholders.
  - Clear communication that the guidelines are an interim step that can be adapted over time as the ecosystems and potential impact are better understood needs to be relayed to stakeholders. Information from the BA and other discussions could assist this communication.
- Given competing priorities and limited resources, EPA and the USCG will take every opportunity, such as exercises, conferences and meetings, to optimize Unified Area Plan outreach and future plans and proposals to the tribes.
- EPA will explore the possibility of detailing EPA FOSCs to work with R10 on updating Subarea Plans, based on the edits to the Alaska Unified Plan and other updated information, and supporting outreach to tribes.
- DOI will be asked to identify resources to help with this work.

### **Timeline and Action Items:**

Key areas that require action to be taken include:



- Updates on Dispersant guidelines, including finalizing the updated Annex F of the Alaska Unified Plan and issuing the NRT Guidance on Environmental Monitoring for Atypical Dispersant Operations
- Finalization of the Biological Assessment and incorporation of its findings into outreach and decision-making
- Continued work on updating Subarea Contingency Plans
- Development and implementation of a coordinated communication plan, including messaging priorities and outreach strategies

The following milestones and dates support one or more of these actions. The specific items are tentative and subject to revision, but they indicate the general time frame and approach.

- Jan 18, 2013 - Strategy Meeting (NOAA, EPA, USCG)
- Feb 4, 2013 - Conduct outreach at Arctic Forum and Alaska Whaling Commission meeting on the need for area contingency planning and the function of the ARRT.
- Feb 20, 2013 - Present Plan of Action to ARRT and request concurrence on proposed approach.
- Feb to May 2013 –Work with ARRT membership to revise Annex F of Unified Contingency Plan to make it an expedited decision making protocol (not a pre-authorization plan). Incorporate NRT Guidance on dispersant monitoring into Annex F.
- May 2013 – Exercise Annex F expedited decision making process.
- May to Aug 2013 – Conduct stakeholder meetings, and incorporate input from those meetings, Lessons Learned from the May exercise, and other Corrective Actions into Annex F.
- Nov 2013 – ARRT is briefed on actions taken and progress. Members are asked to review, support the concept of developing and incorporating a dispersant use matrix in Annex F.
- Jan to May 2014 – ARRT to develop a highly specific, limited dispersant use matrix based on best available science, existing environmental assessments, and stakeholder outreach/feedback. NRT to provide administrative support and actively monitor progress.
- Feb 2014 – Report out during the Alaska Forum for the Environment and Alaska Whaling Commission meeting on ARRT progress.
- May to Jun 2014 – EPA, DOI and USCG assess progress on other actions and potential resource needs to support development of dispersant use matrix.
- May to Jun 2014 –If completed, incorporate BA findings into dispersant use matrix.
- Jun to Aug 2014 – ARRT is again asked to evaluate and, if appropriate, develop language for pre-authorization in Unified Area Plan based on exercises, outreach conducted, dispersant use matrix, Environmental Impact Statements, and Biological Assessment. NRT to provide administrative support and actively monitor pre-authorization progress.

- September 2014 – Exercise any pre-authorizations based on above process.
- Nov 2014 – Request ARRT formal approval of Annex F with plan for any pre-authorization areas.



To:  
Cc:  
Bcc:  
Subject:

### **Oil Dispersant Guidelines Advisory Notes:**

**NOTE:** Effective September 27, 2008, the U.S. Department of the Interior (DOI) no longer approves of the preauthorization of the use of dispersants in Prince William Sound and Cook Inlet in areas referred to as Zone 1. For areas where there is no preauthorization by EPA, ADEC, DOI, and DOC, Paragraph (b) of Section 300.910 of the National Contingency Plan provides that the FOSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representative from the state(s) with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants that are listed on the NCP Product Schedule. However, because the EPA, ADEC, and DOC continue to support preauthorization of dispersant use in areas previously designated as Zone 1, only consultation with DOI, when practicable, is required for those areas

### **3. General Alaska Dispersant-Use Criteria.**

The dispersant use criteria developed for Alaska classify coastal waters into three dispersant use zones. In all cases, the use of dispersants will be based on the determination that the impact of dispersants or dispersed oil will be less harmful than non-dispersed oil. These zones are defined by: 1) physical parameters such as bathymetry and currents; 2) biological parameters such as sensitive habitats or fish and wildlife concentration areas; 3) nearshore human use activities; and 4) time required to respond.

#### **a. Zone 1.**

The use of dispersants in Zone 1 is acceptable and should be evaluated after consideration of mechanical means as a response tool to mitigate oil-spill impacts. The OSC is not required to acquire approval from EPA or the State of Alaska prior to use of dispersants in this zone. However, the OSC will notify the EPA and the State of the decision as soon as practicable.

Zone 1 is defined as an area in which dispersant use should be considered as a means to prevent or reduce the amount of oil reaching the shoreline or other sensitive resources, including:

- endangered or threatened species protected by Federal and State governments;
- nesting, spawning, breeding, and nursery areas for mammals, birds, fish, and shellfish;
- fish and wildlife concentration areas where these animals feed, rest, or migrate;
- sensitive marine habitats, including:

seagrass beds

kelp beds

shellfish beds

tidal flats

marshes

shallow subtidal areas

low energy bays and harbors

rocky intertidal areas;

aquaculture and commercial areas which are shallow enough to allow impacts from oil spills; and recreational and industrial areas.

Zone 1 areas are characterized by water conditions (depth, distance, and currents) that will allow dispersed oil to be rapidly diluted to low concentrations, and are far enough away from sensitive resources that dispersant operations would not cause disturbances. In this zone, there is a significant likelihood that spilled oil will impact sensitive resources, and an immediate response is required in order to mitigate environmental consequences.

**b. Zone 2.**

The use of dispersants is conditional in Zone 2 in order to protect sensitive wildlife and other resources.

The Federal OSC is required to consult with the RRT and obtain approval of the EPA and the State of Alaska prior to the use of dispersants in Zone 2. A spill in Zone 2 must be continuously monitored and the need for dispersant-response actions reappraised accordingly.

Zone 2 areas are characterized by water conditions (depth, distance, and currents) that will allow rapid dilution of dispersed oil to low concentrations, a sufficient distance from sensitive resources that an immediate response is not necessary and dispersant operations would not cause disturbances.

**c. Zone 3.**

The use of dispersants is not recommended in Zone 3. Dispersants may be used in Zone 3 if, on a case-by-case basis, it is determined that the disturbance of the organisms and/or direct exposure to dispersants or dispersed oil would be less deleterious than the impact of spilled oil. As in Zone 2, the OSC is required to consult with the RRT and obtain approval of the EPA and the State of Alaska prior to the use of dispersants in Zone 3.

Zone 3 is defined as the area immediately in or around the resources requiring protection, including the resources themselves. Dispersant use in this area may disturb resources, may not have adequate time for effectiveness, may directly expose the resources to dispersants, or may expose other resources to unacceptably high levels of dispersed oil. Examples of these resources are provided below:

C endangered or threatened species protected by Federal and State governments;

C nesting, spawning, breeding, and nursery areas for mammals, birds, fish, and shellfish;

C fish and wildlife concentration areas where these animals feed, rest, or migrate:

C sensitive marine habitats, including:

C seagrass beds

C kelp beds

C shellfish beds

C tidal flats

C marshes

C shallow subtidal areas

C low energy bays and harbors

C rocky intertidal areas;

C aquaculture and commercial areas which are shallow enough to allow impacts from oil spills; and  
C recreational and industrial areas.

**4. Oil Spill Response Checklist: Dispersant Use.**

The Oil Spill Response Checklist: Dispersant Use in Zone 1, and the Oil Spill Response Checklist: Dispersant Use in Zones 2 and 3 and in Undesignated Areas are included as Tabs C and D, respectively. These checklists serve as guidelines for the FOSC to seek RRT approval for dispersant use. The FOSC will use the incident specific information provided in the checklists in conjunction with the "Oil Dispersant Guidelines for Alaska" as the basis for his/her decision regarding dispersant use.

Chris D. Field, Program Manager  
EPA Emergency Management Program, R-10  
(206) 553-1674





ALASKA DEPT OF  
ENVIRONMENTAL CONSERVATION



USCG  
SEVENTEENTH DISTRICT



USEPA  
REGION X

14 October 2008

Mr. Hans Neidig  
Special Assistant to the Secretary for Alaska  
U.S. Department of the Interior Office of the Secretary  
1689 C Street, Suite 100  
Anchorage, AK 99501

Dr. Willie R. Taylor, Director  
Office of Environmental Policy and Compliance  
Department of the Interior  
1849 C St, NW, MS 2462  
Washington, DC 20240

Gentlemen:

Our agencies have a shared responsibility to be prepared to respond to crude oil spills in Alaska waters. This responsibility includes having the tools, and authorizations to use them, available in time to minimize harm to the environment. We are concerned that the action taken by the Department of Interior (DOI), in correspondence dated September 26, 2008, to no longer approve preauthorization for the use of In Situ Burning (ISB) and dispersants in Prince William Sound and Cook Inlet was taken without needed coordination with the principle response organizations in Alaska and compromises current Alaska spill planning and preparedness to levels that precede the 1989 Exxon Valdez oil spill. In effect, this could make Alaska the only coastal state in the country without any form of dispersant preauthorization.

One of our primary concerns is the result this may have on availability of pre-staged dispersants in Alaska. There is a direct linkage between industry incentive to maintain dispersant stockpiles and preauthorized zones, and an unintended consequence of this action could be a diminished dispersant capacity statewide and inability to protect and mitigate impacts to important resources.

In situ burning and oil dispersant guidelines for Alaska have been adopted by the Alaska Regional Response Team (ARRT) in the Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases. This plan, known as the Unified Plan, meets the state and federal statutory requirements for spill planning, preparedness and response in Alaska. Changes to this plan are reviewed by the ARRT before being reviewed and adopted by the USCG, EPA and the State. If DOI believes changes are needed to the Unified Plan regarding the authorization and deployment of dispersants, the requested changes should be submitted to the ARRT Co-chairs with whatever new scientific information or data that may be available.

To avoid compromising Alaska's existing planning and response capabilities we have instructed our respective On-Scene Coordinators to continue to use the current dispersant guidelines in the Unified Plan to make Unified Command decisions on dispersant use. Since 1989 the On-Scene Coordinators have always consulted the ARRT in accordance with the National Contingency Plan (NCP), including Zone 1 areas, and they will continue to do so in the future. DOI's removal of preauthorization has no effect on in situ burn decisions since the ISB Guidelines are not preauthorization under the NCP.

With this historical record of consultation we are perplexed by DOI's sudden reversal without first engaging in the ARRT guideline updating process.

Enclosed is a short briefing memorandum that further explains our issues and concerns regarding the authorization and use of dispersants.

If you would like to discuss the current oil dispersant guidelines and the process we see for addressing any changes DOI has in mind, we would welcome the opportunity to do this.



A.E. Brooks  
Rear Admiral, USCG  
Commander, Seventeenth  
Coast Guard District



Larry Hartig  
Commissioner  
Alaska Dept of Environmental  
Conservation



Elin Miller  
Regional Administrator  
Region 10  
U.S. EPA

Encl: Response to DOI letter of September 26, 2008

Cc:

Ms. Debbie Dietrich, Chair National Response Team  
Rear Admiral Joseph Castillo, U.S. Department of Homeland Security – U.S. Coast Guard  
CAPT Anthony Lloyd, Vice Chair National Response Team  
CAPT Michael Cerne, U.S. Department of Homeland Security – U.S. Coast Guard  
Mr. Carl Lautenberger, U.S. Environmental Protection Agency  
Mr. Ken Vaughan, U.S. Department of Agriculture – U.S. Forest Service  
Mr. Douglas Helton, U.S. Department of Commerce  
Lt Col Lori Stender, U.S. Department of Defense – Alaska Command  
Ms. Tammy Brown, U.S. Department of Defense – Navy  
Mr. Merv Mullins, U.S. Department of Defense – U.S. Army Corps of Engineers  
Ms. Kathy Beecher, U.S. Department of Energy  
Mr. Brian Swanson, U.S. General Services Administration  
Dr. Juliana Grant, U.S. Department of Health and Human Services  
Mr. Robert Forgit, U.S. Department of Homeland Security – FEMA  
Ms. Pamela Bergman, U.S. Department of Interior  
Mr. Michael Underhill, U.S. Department of Justice  
Mr. Scott Ketcham, U.S. Department of Labor  
Mr. Steven Osborne, Alaska Inter-Tribal Council  
CAPT Scott Robert, U.S. Department of Homeland Security – U.S. Coast Guard  
CAPT Mark Hamilton, U.S. Department of Homeland Security – U.S. Coast Guard

CDR Daryl Verfaillie, U.S. Department of Homeland Security – U.S. Coast Guard  
Mr. Matt Carr, U.S. Environmental Protection Agency  
Mr. Larry Dietrick, Alaska Department of Environmental Conservation  
Mr. Bob Mattson, Alaska Department of Environmental Conservation  
Ms. Betty Schorr, Alaska Department of Environmental Conservation  
Mr. Gary Folley, Alaska Department of Environmental Conservation  
Mr. Ed Meggert, Alaska Department of Environmental Conservation  
Mr. Scott Tiernan, Alaska Department of Environmental Conservation  
Mr. Thomas Lonnie, Alaska BLM Director  
Mr. John Goll, Alaska MMS Director  
Mr. Geoff Haskett, Alaska Fish and Wildlife Service Regional Director  
Ms. Sue Masica, Alaska National Park Service Regional Director  
Mr. Niles Cesar, Alaska BIA Regional Director

Enclosure to USCG, ADEC, EPA letter of 14 October 2008:

- Preauthorized use of dispersants, as currently outlined in the Unified Plan, is in the best interest of the citizens and resources of Alaska. This policy was the result of a well thought, scientifically based, collaborative process. The premise for preauthorization remains valid.
- Trust resources identified in DOI's letter (e.g., birds, otters, Native allotments, and refuge lands), would likely be put at significantly higher risk if the use of dispersants were delayed or not employed.
- Nationally, DOI Regional Environmental Officers have supported preauthorized use of dispersants. This rescission is counter to a nation-wide trend. Of the five agencies required for dispersant preauthorization, DOI in Alaska is noticeably alone in the view that preauthorization no longer serves a valid need.
- A National Academy of Science report, *Using Oil Spill Dispersant on the Sea*, reported sensitive inshore habitats are best protected by preventing oil from reaching them; this landmark study stimulated a proliferation of dispersant and in-situ burn preauthorization agreements around the country.
- The National Contingency Plan (NCP) states DOC and DOI must approve any preauthorization plan. However, a unilateral action to rescind is, to our knowledge, unprecedented and counter to the collaborative process outlined in the NCP and Unified Plan both of which have established procedures for accomplishing revisions through the RRT.
- The National Contingency Plan requires state approval for preauthorization plans and state concurrence for dispersant applications to fulfill sovereign responsibilities for protection of state waters; fisheries; sub tidal lands, intertidal lands and state owned uplands; marine resources; personal, sport, subsistence and commercial uses; and natural resource trust responsibilities. The state supports preauthorization for dispersants so that all tools are available for maximum protection of shoreline resources and sensitive habitats when determined by the Unified Command.
- In an October 3, 2008 letter to the ARRT Co-chairs, DOC as the other resource trustee agency, stated they do not concur with the DOI letter, disagree with the premise that consultation on dispersant usage at the time of a spill incident will necessarily result in a better outcome for the natural resources at risk, and strongly support scientifically derived preauthorization zones.
- The Unified Plan was adopted by the USCG, EPA and DEC to meet the federal requirements of the National Contingency Plan and state requirements for State and Regional Master Plans. The Unified Plan is formally adopted following a legal, regulatory, and public review process. Member agencies of the Alaska Regional Response Team use this process to propose changes or updates to the Unified Plan.



- The existing guidelines were originally drafted in the late 1980's, however they are periodically reviewed by the RRT. The Unified Plan was updated in 1999, and earlier this year, the ARRT decided to undertake another review of the dispersant guidelines. In fact, a proposal before the Science & Technology committee last February to eliminate zonation was unanimously opposed. This on-going review is a deliberative, open process with the full participation of DOI and other interested parties.
- A number of stakeholders have expressed alarm over DOI's action, including federal and state OSCs, OSROs, and industry representatives. The crux of their concern is the elimination of preauthorized zones will cause unnecessary and unwarranted confusion and delays, and removes any incentive for industry to stockpile dispersants in Alaska.
- Neither the existing ISB Guidelines nor the recent update to these guidelines constitute preauthorization for in situ burning under the National Contingency Plan. The ISB Guidelines provide the mechanism for the Unified Command to approve in situ burning in accordance with state law and the Clean Air Act under emergency conditions to protect resources and sensitive habitats.
- No new scientific information or data has been provided by DOI as an adequate basis to either negate or modify the current decision making framework for dispersants. DOI has not identified any research, studies, synthesis or scientific inquiry regarding dispersant selection, application, use or effects. Research and studies regarding fate and effects, effectiveness or selection of various dispersant agents are ongoing and the RRT is continuously open to any new information or synthesis of scientific information that may serve as a basis for modifying the existing framework.
- There are many other state and federal agencies, tribal, local communities, subsistence and other varied interests with jurisdictional, ownership or other involvement with protection of marine resources that must be evaluated and considered. Under state and federal law, the Unified Command works directly with all interests during a spill response to make the best decision possible to protect resources and the environment.